IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 2655 of 2007(N)

OS.30/1999 of SUB COURT,PARAVUR
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PETITIONER:

N.A. SUBAIR, S/O. ABDUL KHADER,
NEDUVELIPARAMBIL HOUSE,
PALUPARASSERY, CHENGAMANADU P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.B.RAMACHANDRAN

RESPONDENTS:

THE DHANALAKSHMI BANK LTD.,
DESOM BRANCH, REPRESENTED BY ITS
BRANCH MANAGER.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.2655 OF 2007

Dated 23rd January 2007

J U D G M E N T

Petitioner is judgment debtor. Respondent is the decree holder. This petition is filed under Article 227 of Constitution of India challenging the order for sale of the mortgaged property in execution of the decree. Case of petitioner is that for realisation of the decree debt the entire property need not be sold, as by sale of part of the property the entire decree debt could be realised and hence the order for sale of the entire mortgaged property is to be quashed. This petition is filed under Article 227 of Constitution of India contending that sale is in violation of the provisions of Rule 64 and is bad and therefore the order for sale is to be quashed.

2. When mortgaged property is sought to be sold, Rule 64 Order XXI has no application. Rule 64 provides that when attached property is to be sold for realisation of the decree debt, it is the obligation of the executing court to consider whether the entire

attached property is to be sold for realisation of decree debt or by sale of part of the property the decree debt could be satisfied. But as Rule 64 has no application when the sale is that of the mortgaged property petitioner is not entitled to challenge the order for sale barring on rule 64 of Order XXI. The question whether for realisation of mortgage debt the entire mortgaged property is to be sold should have been agitated by the petitioner before the decree is passed and not subsequent to the decree, petitioner is not entitled to raise the contention that only part of mortgaged property is to be sold while executing the decree. It was also contended that the property sought to be sold will fetch more than Rs.25 lakhs. Under second proviso to sub rule 2 of Rule 66, it is not the function of the executing court to enter its value of the property. It need only incorporate the value claimed by the judgment debtor. Executing court has done it. There is no merit in the petition.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.